

176159
2015-050

LEASE and OPERATING AGREEMENT

by and between

CITY OF HOUSTON, TEXAS,

as Landlord,

and

HOUSTON GOLF ASSOCIATION

as Tenant

Houston, Harris County, Texas

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LEASE and OPERATING AGREEMENT

This LEASE and OPERATING AGREEMENT (this "Agreement") is made and entered into effective as of the date this Agreement is countersigned by the City Controller of the City of Houston, Texas (the "Effective Date"), by and between the CITY OF HOUSTON, TEXAS, a home-rule city organized under the laws of the State of Texas (the "City" or "Landlord"), and HOUSTON GOLF ASSOCIATION, a Texas Non-Profit corporation ("HGA" or the "Tenant"). Landlord and Tenant are referred to herein collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, the City owns the Gus Wortham Golf Course, located at 7000 Capitol St., Houston, Texas 77011 and which Premises is legally described on Exhibit "A" attached hereto (the "Golf Course" or "Premises");

WHEREAS, the City desires the HGA lease and operate the Golf Course, and the HGA desires to lease and operate the Golf Course;

WHEREAS, the HGA desires to lessen the burden of the City and fulfill the HGA's charitable purpose as further set forth in its Bylaws;

WHEREAS, the City and the HGA desire to develop sustainable long term operations of the Golf Course;

WHEREAS, certain interested citizens ("Citizens") and the HGA desire to raise funds to be used to restore and improve the Golf Course and construct certain improvements thereon (the "Improvements"); and

WHEREAS, the City desires to provide for the long term sustainability of the Golf Course through this Agreement.

NOW, THEREFORE, in furtherance of the foregoing, the parties hereto agree as follows:

AGREEMENTS

For and in consideration of the respective covenants and agreements of Landlord and Tenant set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Landlord and Tenant, Landlord and Tenant do hereby agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Certain Definitions. The following terms shall have the meaning set forth below in this Section:

(i) Chief Development Officer ("CDO"). The director of the division of the Mayor's Office that develops, implements and manages citywide policies and procedures for economic development programs, or any similar official as designated by the Mayor.

(ii) City Council. The acting City Council of the City.

(iii) Commencement Date. The Commencement Date for this Agreement as set forth in Section 2.2.1 of this Agreement.

(iv) Director. The director of Houston Parks and Recreation Department or any director appointed by the mayor to administer this agreement.

(v) Effective Date. The date when the Controller of the City of Houston countersigns this agreement.

(vi) Encumbrances. Any defects in, easements, covenants, conditions or restrictions affecting, or Liens or other encumbrances on, the title to the Premises, whether evidenced by written instrument or otherwise evidenced.

(vii) Governmental Rule. Any statute, law, treaty, rule, code, ordinance or regulation applicable to Persons, facilities or activities within the jurisdiction of the Governmental Authority promulgating the same, any permit, interpretation, certificate or order of any Governmental Authority pursuant to the foregoing or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority with respect to any of the foregoing.

(viii) Improvements. Means all permanent improvements, structures, buildings and fixtures of any kind whatsoever, whether above or below grade, including buildings, the foundations and footings thereof, utility installations, storage, loading facilities, walkways, driveways, landscaping, signs, site lighting, site grading and earth movement, and all fixtures, plants, apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, fittings, piping, connections, conduits, ducts and equipment of every kind and description now or hereafter affixed or attached to any of such buildings, structures or improvements and used or procured for use in connection with the heating, cooling, lighting, plumbing, ventilating, air conditioning, refrigeration, or general operation of any of such buildings, structures or improvements, and any exterior additions, changes or alterations thereto or replacements or substitutions therefor installed or constructed to serve or for use at the Golf Course.

(ix) Liens. With respect to any property, any mortgage, lien, pledge, charge or security interest, and with respect to the Premises, the term "Lien" shall also include any lien for builder, mechanic, warehouseman, materialman, contractor, workman, repairman or carrier lien or other similar liens, including, but not limited to, Mechanic's and Materialmen's Liens and claims.

(x) Mechanic's and Materialmen's Liens. Any Lien or claim of Lien, whether choate or inchoate filed or which any third party may be entitled to file against the interest of Landlord or Tenant in the Premises by reason of any work, labor, services or materials supplied or claimed to have been supplied on or to the Premises.

(xi) Person. Any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority or any other form of entity.

(xii) Premises. The property now known as Gus Wortham Golf Course, which is located at 7000 Capitol St., Houston, Texas 77011, ("Gus" and the "Golf Course") less allowances for Community Amenities the exact site boundaries to be determined in the conceptual design to be approved by the Mayor and the HGA as set forth in Section 5.2(i) and any property acquired during the term of this Agreement to serve or service the Golf Course.

(xiii) Term. The term of this Agreement as provided in Section 2.3 of this Agreement.

ARTICLE 2 LEASING AND OPERATIONS

Section 2.1 Lease Grant. Upon the Commencement Date and subject to the terms and provisions contained herein, Landlord does hereby lease, let, demise and rent unto Tenant, and Tenant does hereby take, lease and rent from Landlord, the Premises, to have and to hold such Premises for the Term as hereinafter provided.

Section 2.2 Grant of Development Rights. As of the Effective Date of this Agreement, City grants to HGA all rights (the "Development Rights") set forth in Sections 2.6 and 2.7. All such Development Rights shall remain in effect from the Effective Date of this Agreement throughout the term of this Agreement.

2.2.1 Commencement Date. As set forth in Section 3.1, the CDO is to provide the HGA written notice of its approval (the "Initial Fundraising Approval" as further defined in Section 3.1) of the HGA's Initial Fundraising Commitment Notice. The date the CDO provides the HGA the Initial Fundraising Approval shall be deemed the Commencement Date of the Lease.

Section 2.3 Term. The term of this Lease (the "Term") is thirty years. The Term shall commence at 12:00 a.m. on the Commencement Date, and expire at the end

of thirty (30) years or such earlier termination of this Agreement in accordance with the terms of this Agreement.

Section 2.4 Renewal. Subject to City Council approval, HGA shall have the option to renew this Agreement on the same terms as set forth herein for two consecutive renewal terms of thirty (30) years each, by giving the City written notice of renewal no less than one (1) year before the last day of the then current term. The initial and renewal terms are individually and collectively referred to as the Term. City agrees that provided there is no outstanding Event of Default, at the time of a renewal, the City will recommend City Council approval of such renewal.

Section 2.5 Leasing. The City hereby leases the Golf Course to HGA, and to convey the personal property and fixtures now used at the Golf Course (the "Golf Course Equipment", as set forth in Section 7.6) to HGA, and HGA shall retain all revenue for the benefit of the Golf Course and related operations. The City will not provide any additional funding for the restoration, refurbishing, construction, maintenance or operations of the Golf Course.

Section 2.6 Right of Entry. City hereby grants to HGA, and their respective guests, invitees, employees, engineers, architects and other consultants, contractors and other representatives the right of entry on the Golf Course to perform all activities as HGA, respectively, deem reasonably necessary or appropriate in connection with the performance of their rights and obligations permitted, allowed or required hereunder and all other lawful acts incidental thereto, including without limitation all inspections, tests, studies and assessments, including environmental assessments, as the HGA deems necessary. HGA shall comply, and contractually require its contractors and subcontractors to comply with the insurance and indemnification requirements set forth in Article 10, Article 17 and Article 18 to the extent permitted by law.

Section 2.7 Naming Rights. HGA shall have the right to name features and improvements within the Golf Course in accordance with this Agreement. HGA will submit and obtain approval of the Director of a Names and Sponsorship policy prior to promising any feature for naming, accepting any gift contingent upon naming a feature, seeking or accepting corporate sponsorship of any program or event at the Golf Course. HGA's policy shall be consistent with the general principles in the Policy for Naming Park Property Policy Number 1010.4 or any successor policy adopted by the City and incorporate the General Criteria set out therein.

(i) Names shall not become effective until approved by the Director and only upon the substantial completion of construction as set out in Section 5.8. No name shall be granted for a term longer than the term of this Agreement.

(ii) HGA shall not rename areas or features that were previously named by City, except with the prior approval of City. The City will notify the HGA of any such areas or features.

(iii) In no event will any feature be named for a commercially available product unless the name of product is also the name of the corporation selling the product.

(iv) HGA shall have the right to engage corporate sponsors of programs or events at the Golf Course in accordance with a sponsorship policy reasonably approved by the Director.

Section 2.8 Donor Recognition. Neither City nor the HGA will sell the naming right for the Improvements as a whole except with the consent of both entities. HGA will have the right to incorporate Donor recognition programs, including naming rights, with regards to particular exhibits, installation, improvements and facilities in connection with its fund-raising and capital campaigns from time to time; provided, however, that such donor recognition programs will not grant naming rights to any sexually oriented businesses or businesses for which a majority of their revenues derive from the sale of alcohol or tobacco. City agrees to honor the names granted by HGA for the shorter of the period of time specified by the original donor or the life of the particular facility bearing the name specified by that donor.

ARTICLE 3 FUNDING

HGA shall be solely responsible for receiving and maintaining any and all capital, which may be raised by Citizens and the HGA for purposes of restoring, refurbishing, constructing, maintaining and operating the Golf Course, including the club house and other desired improvements at the Golf Course. The estimated cost of the total project is approximately \$10-15 million. The HGA will provide the CDO a fundraising plan, as further set forth on "Schedule 1" ("Funding Plan").

Section 3.1 Initial Fundraising. On or before December 31, 2015, the HGA shall notify the CDO in writing that it has raised the initial fundraising amount of \$5 million dollars in committed funds dedicated to the Golf Course, including reasonable evidence of such funds (the "Initial Fundraising Commitment Notice"), which funds may be disbursed by HGA beginning after the Effective Date for purposes set forth in this Contract. The CDO will provide the HGA with written notice of its approval (the "Initial Fundraising Approval"), or notice of non-approval (with reasons for the non-approval), and which approval will not be unreasonably withheld, delayed or conditioned, within at least twenty (20) days of the date the HGA delivered the Initial Fundraising Commitment Notice. If HGA fails to provide the CDO with the Initial Fundraising Commitment Notice by December 31, 2015, or if the CDO notifies the HGA that it does not approve the Initial Fundraising Commitment Notice, subject to the above reasonable standard of approval, this failure or notice of non-approval shall be deemed a fundraising deficiency.

Section 3.2 Budget. HGA shall prepare and submit to the CDO in writing a detailed construction budget (the "Budget") for (i) the restoration, refurbishment, or construction of the Golf Course, and (ii) the club house and other desired improvements.

Section 3.3 Fundraising Reports. HGA shall provide a report of fundraising activities and achievements to the CDO on a calendar quarterly basis, at least 30 days after the calendar quarter is complete.

Section 3.4 Fundraising Deficiencies. Failure to reach the required fundraising target by the date specified above, or as set forth in the Funding Plan, shall constitute a fundraising deficiency. Upon the occurrence of a fundraising deficiency, the City will provide written notice to the HGA that it believes a fundraising deficiency has occurred. Within 60 days of the date of the notice, HGA shall have the right to cure the deficiency and show reasonable evidence to the CDO that the fundraising deficiency has been cured. Upon failure by the HGA to provide such reasonable evidence, this Agreement may then be terminated by either party, upon written notice of termination to the other party.

ARTICLE 4 POSSESSION; QUIET ENJOYMENT; USE

Section 4.1 Delivery of Possession. On the Commencement Date, Landlord shall deliver to Tenant exclusive possession, use and occupancy of the Premises, free of all tenancies and parties in possession of the Premises (other than those arising by, through or under Tenant), subject only to (i) the rights of Landlord under this Agreement, and (ii) the easements and other encumbrances or restrictions of record set forth on Exhibit "F" attached hereto and made a part hereof (collectively, the "Permitted Encumbrances").

Section 4.2 Condition of the Premises. HGA accepts Golf Course "as is" in its condition as of the Commencement Date of this Agreement. The HGA is not responsible or liable for pre-existing conditions, including any pre-existing environmental hazards, or contamination, if any. Effective as of the Effective Date the HGA may conduct a Phase I environmental assessment of the Premises.

4.2.1 HGA agrees that no representations have been made by the City or its agents to HGA with respect to the condition or profitability of the Golf Course nor have there been any promises made to alter, repair, or improve same before or after execution of this Agreement.

4.2.2 City accepts no responsibility or liability for any loss or damage to HGA-owned equipment or conveyances.

4.2.3 HGA shall not commit any waste in or of the Golf Course and, upon expiration or termination of the Agreement, shall give up to the City immediate possession of the Golf Course in at least as good condition as it is in on Commencement Date, reasonable wear and tear and damage from fire or the elements only excepted. If HGA does not promptly surrender possession of same, the Director may re-enter and repossess the premises.

4.2.4 Personal property of HGA must be removed from the property upon the expiration of the Term unless otherwise authorized by the Director. If

any property of HGA is not removed upon the expiration date of the Term or by the date otherwise authorized by the Director, such property shall become and remain the property of the City.

Section 4.3 Covenant of Quiet Enjoyment. Effective as of the Commencement Date, Landlord covenants that Tenant, upon keeping, observing and performing the terms, covenants and conditions of this Agreement to be kept, observed and performed by Tenant, shall and may quietly and peaceably hold, occupy, use, and enjoy the Premises without ejection or interference by or from Landlord or any other Person (other than Persons claiming by, through or under Tenant), subject only to the Permitted Encumbrances.

Section 4.4 Use. Tenant shall operate a Golf Course throughout the duration of this Agreement and a failure to do so shall be an Event of Default as set out in Section 15.1. Tenant throughout the Term, shall have the exclusive right to use and occupy the Premises, for any lawful purpose other than the Prohibited Uses (as hereinafter defined), including without limitation for the following purposes (collectively, the "Permitted Uses") but in all cases consistent with applicable law and the Operating Rules set forth in Section 7.5:

4.4.1 As soon as reasonably feasible and subject to the renovation and construction plan schedules set forth on Schedule 2, the operations at the Golf Course will include The First Tee program as further set forth below in Section 4.4.3 and a driving range.

4.4.2 The playing, exhibition, presentation, teaching, educating and broadcasting (or other transmission) of professional, semi-professional, and amateur instructions, golf games and activities related thereto, including training, practices and exhibitions, promotional activities and events, community and public relations, advertising, and other marketing of games and events, ticket sales, and any and all other activities which, from time to time, are customarily conducted by or are related to the presentation and broadcasting of golf courses; and

4.4.3 The fostering, teaching, sponsoring and managing of programs of the HGA and its related subsidiaries and affiliates, which shall include but not be limited to The First Tee and Junior Golf, and as may be increased or decreased during the Term.

4.4.4 Restaurants, catering, event spaces, clubs and bars (including brew pubs and sports bars);

4.4.5 Sale of food and alcoholic and non-alcoholic beverages, souvenirs and other items customarily sold and marketed in sports and entertainment facilities;

4.4.6 Parking in any parking facilities located on the Premises;

4.4.7 Retail uses, including such uses located in kiosks, carts and similar movable or temporary retail facilities;

4.4.8 Museum, charitable, scientific, literary and educational uses or to foster amateur sports competitions;

4.4.9 Conducting day-to-day business operations in Tenant's office space constructed or maintained on the premises;

4.4.10 Storage of maintenance equipment and supplies used in connection with the operation of the Premises or all other Permitted Uses;

4.4.11 Construction work permitted or required pursuant to the terms of this Lease;

4.4.12 The use and enjoyment of the rights and licenses granted to Tenant under this Lease regarding any intangible property rights;

Other uses reasonably related or incidental to any of the foregoing or not inconsistent with any of the foregoing that are not Prohibited Uses.

Section 4.5 Prohibited Uses. Tenant shall not use, or permit the use of, the Premises for any of the following (collectively, the "Prohibited Uses");

4.5.1 Use or allow the Premises to be used for the sale or display of any pornographic material or material which is obscene under standards set forth in any Applicable Laws, or operate or allow any person to operate in, on or about the Premises any store or other facility, a principal or significant portion of the business of which is an "Enterprise," as such term is defined in Section 28-121 of the City of Houston Municipal Code, as same may be amended from time to time during the Term, or any similar business;

4.5.2 Use or allow the Premises to be used for the sale or display of any lewd, offensive or immoral sign or advertisement, including any sign or advertisement that promotes lewd, offensive or immoral activities, including sexually oriented businesses;

4.5.3 Use or allow the Premises to be used for the sale of paraphernalia or other equipment or apparatus which is used primarily in connection with the taking or use of illegal drugs;

4.5.4 Use or allow the Premises to be used as a place of residence by any Person;

4.5.5 Use or permit the Premises to be used for a shooting gallery, target range, vehicle repair facility, car wash facility, warehouse (but any area for the storage of goods intended to be sold or used in connection with Tenants' operations permitted hereunder shall not be deemed to be a warehouse), convalescent care facility

or mortuary, or use or permit the Premises to be used for any assembly, manufacture, distillation, refining, smelting or other industrial or commercial operation or use;

4.5.6 Use any portion of the Premises for storage (other than required for or related to permitted uses); or

4.5.7 Use or permit the use of the Premises as a casino (or other establishment in which gambling is permitted or games of chance are operated), an establishment that allows full or partial nudity, a massage parlor (provided that massage services may be offered by a licensed massage therapist as a part of a health, beauty or fitness operation) or a tanning parlor.

ARTICLE 5 DESIGN AND CONSTRUCTION

Section 5.1 Historic Nature of the Gus Wortham Golf Course. The designs for the Golf Course and Clubhouse shall respect the historic nature of the Gus Wortham Golf Course and if reasonably possible shall favor refurbishing or restoration where commercially and technically feasible.

Section 5.2 Plans and Specifications. Subject to the other terms and provisions of this Agreement, HGA shall prepare and submit to the City plans (the "Plans") the design, development and construction, reconstruction, refurbishing, rehabilitation or restoration ("Construction") of the Improvements. Without limiting the generality of the foregoing, HGA shall have sole responsibility for the selection, engagement and payment of the Project Architect, the Contractors, all subcontractors and consultants, and all others that may at any time and from time to time be engaged in the planning, development or construction of the Improvements. The schedule for the delivery of the Plans is set forth on "Schedule 2".

(i) HGA shall, without expense to City, prepare conceptual plans for the Improvements. HGA shall coordinate with the CDO, who will confer with the Director and the Mayor of City or her designee ("Mayor") to obtain the City's approval of conceptual plans, schematic drawings and preliminary elevations for the Improvements, which shall include a club house and shall show access, traffic, curb cuts, and similar matters (collectively, the "Approved Design"). A copy of the Approved Design shall be filed at the offices of Mayor by the CDO.

(ii) HGA shall, without expense to City, prepare Plans for construction and development of the Improvements. HGA shall submit copies of the Plans to the Director of HPARD (or the Director's designated representative) at intervals of 30% and 90% completion for review and approval solely to confirm that the Improvements, as so planned, conform to the Approved Design. The Director shall provide HGA comments or approval within fourteen (14) business days of receipt of HGA's submittals of the 30% complete and 90% complete Plans; provided, however, if no response is given to HGA within each 14-day review period, the Plans so submitted shall be deemed to have been approved by the Director on behalf of the City. Upon

completion of all Plans, HGA shall file same with the Director, and the Plans shall be deemed to be incorporated herein by reference for all intents and purposes.

5.2.2 HGA agrees that the Plans will not be materially inconsistent with the Approved Design. During the construction of the Improvements, HGA shall invite the Director's designated representative to attend periodic project meetings with HGA's project manager and general contractor. During construction HGA shall have the right to approve change orders and field changes, but proposed changes that are materially inconsistent with the Approved Design shall be submitted to Director for approval. Director shall provide such review within fourteen (14) days of receipt of the proposed change; provided, however, if no response is given to Director within each 14-day review period, the proposed change so submitted shall be deemed to have been approved by the Director on behalf of the City.

5.2.3 City shall have no responsibility for the preparation of the Plans or the construction of the Improvements, except as otherwise set forth in this Agreement.

Section 5.3 Permits and Fees. HGA shall obtain building permits, licenses and approvals required by Governmental Authorities for the Improvements for construction.

Section 5.4 Contractors. HGA shall enter into the Construction Contracts with the Contractors to construct the Improvements, however there may be instances where subcontractors may provide certain work under certain of the Contractors.

5.4.1 Each Construction Contract shall provide that: (1) the City is a third-party beneficiary of all representations and warranties made by the Contractor to HGA; and (2) the Contractor shall look solely to HGA (or an appropriate Contractor, if applicable) for any payment due under the Construction Contract.

5.4.2 For any project with a contract of more than \$100,000.00, HGA shall require each Contractor to furnish payment and performance bonds, naming City as co-obligee, in the full amount of the contract sum for each Construction Contract, and in form and substance reasonably satisfactory to City, based on such bonds as are then commercially available for major construction projects in the City of Houston.

5.4.3 All warranties from each Contractor shall inure to the benefit of HGA and City and shall be applied to benefit the Premises and Improvements.

Section 5.5 Construction. HGA shall not commence actual construction of the Improvements until the Commencement Date. The construction of the Improvements shall be done substantially in accordance with the Plans and the Construction Schedule, in compliance with all Applicable Laws, and in a good and workmanlike manner. Construction may be phased, but will meet the following performance standards as set forth on Schedule 2. Subject to unavoidable defaults and delays as set forth in Section 21.8, the Final Completion Date shall be no later than December 31, 2019.

5.5.1 Failure to Meet Standards. The failure of HGA to meet these construction standards set forth above in this Section 5, or any standard under Section 5.2 is an Event of Default subject to cure and remedies of this Agreement pursuant to Section 15.1.

Section 5.6 Liens. HGA shall pay all bills for labor, materials and supplies in connection with such construction, and shall obtain releases of liens from the parties performing such labor or furnishing such materials and supplies. HGA shall pay, or cause to be paid, all fees for engineering, architectural, legal and other professional services incurred by HGA and its Contractors in connection with such construction. Upon request of City, HGA shall provide City with a status report covering the progress to date of the construction of the Improvements.

Section 5.7 Utilities. HGA shall, without expense to City, provide the construction, labor and materials necessary to connect the Improvements to water and sanitary and storm sewer lines located in adjoining right of way, property or within the Premises, and to provide proper surface drainage for the Golf Course.

5.7.1 Utility lines and connections that serve the Improvements shall be underground.

5.7.2 HGA shall arrange or pay for all utility connection fees, including, but not limited to, all fees and charges for sewer and wastewater capacity reservation, capital recovery, connection and use in connection with the Improvements.

5.7.3 Irrigation plumbing shall be installed for operations under this agreement and shall be segregated from plumbing for delivery of water for human use so as to allow supply of irrigation water from reclaimed wastewater or greywater.

Section 5.8 Substantial Completion. When the work to be performed under any construction contract has been completed substantially in accordance with the Plans (the "Substantial Completion"), HGA will deliver to City a certificate from Project Architect certifying that, to the best of the architect's knowledge, as of the date specified therein (the "Substantial Completion Date"), the work to be performed under such Construction Contract has been substantially completed in a good and workmanlike manner and in accordance with the Approved Design, the Plan and any change orders or field changes authorized under this Agreement subject only to items specified in such certificate as requiring corrective work.

5.8.1 Within ninety (90) days following the Substantial Completion Date of each phase of the project, HGA shall at its expense provide the following items to City: (1) a final as-built survey of the Premises and Improvements completed in that phase; (2) copies of all documents, if any, indicating compliance or noncompliance with any Governmental Authority with jurisdiction over the Premises or Improvements Improvements completed in that phase; (3) any and all soil, engineering and environmental reports relating to the Premises and Improvements Improvements

completed in that phase; and (4) all subleases, bookings and other agreements relating to the Premises that are not cancelable upon thirty (30) days' Notice.

5.8.2 Within ninety (90) days after the Substantial Completion Date for all of the construction work, under all of the Construction Contracts, City may examine the Premises and Improvements and conduct any and all such inspections as City may desire, including but not limited to environmental tests and studies, in order to verify the Improvements are substantially completed in a good and workmanlike manner and in accordance with the Approved Design, the Plan and any change orders or field changes authorized under this Agreement subject only to items specified in such certificate as requiring corrective work. City agrees to hold HGA harmless from any injury or damage incurred in connection with such inspections. If City determines that the Premises or Improvements are not in conformance with the foregoing items, City may notify HGA in writing, and all non-conforming items shall be corrected prior to the Final Completion Date.

Section 5.9 Final Completion. The Certificate of Final Completion to be issued by HGA's Architect for all of the Construction Contracts, shall include (a) a certification that all punch-list items identified in any Certificates of Substantial Completion have been completed except for any on-going work covered by contractors or manufacturers' warranties; (b) a certificate signed by the Contractor for each Construction Contract, certifying that matters required to be performed under such Construction Contract have been completed and all labor and materials for which payment is due under the Construction Contract have been fully paid, and that all building materials, supplies and equipment physically incorporated into the Improvements are free and clear of all liens and encumbrances; and (c) permits, approvals and certificates required by any and all Governmental Authorities for occupancy of the Improvements including but not limited to the Certificate of Occupancy for any structure requiring same, have been obtained.

Section 5.10 Community Amenities. The City reserves the right to plan and construct certain community amenities, which may include a hike and bike trail as part of its trail network, or other enhancements along the public right of way, that may reasonably use land currently used by the Golf Course, which shall respect the historical nature of the Golf Course, and shall be mutually approved by HGA and the City (the "Community Amenities"). HGA agrees to reasonably accommodate the Community Amenities without any compensation or reimbursement for this use. HGA will coordinate planning and construction with the Director and the Houston Parks Board to reasonably accommodate the Community Amenities. HGA acknowledges and recognizes that the Community Amenities may be a significant amenity for the Golf Course and the City, and may require certain reasonable accommodations or design constraints to accommodate special, access, aesthetic or safety concerns. HGA agrees to discuss same with the City and the Houston Parks Board to reach amicable and mutually acceptable resolutions of all such matters.

Section 5.11 Payment for Community Amenities. The City agrees to fund at least \$1,000,000.00 for the Community Amenities.

ARTICLE 6
RENT; UTILITIES; TAXES

Section 6.1 Rent. Landlord hereby acknowledges the receipt of Rent for the Term in the amount One Hundred and No/100 Dollars (\$100.00) which Tenant has pre-paid for the entire Term which shall include any renewal term (the "Rent"). Notwithstanding the foregoing, the principal and primary consideration is the undertaking by Tenant to cause the Premises to be operated, maintained, and facilities to be constructed thereon as provided herein.

Section 6.2 Contract Administrative Fee. In order to cover the City's anticipated administrative and marketing costs, beginning after the Commencement Date, HGA agrees to pay and the City agrees to accept annual payments (the "City Annual Fee") for the City's actual costs of administering the Contract and providing marketing support across all available City platforms, not to exceed the "Maximum Fee."

The Maximum Fee will be calculated as follows:

<u>Annual Revenue</u>	<u>City Maximum Fee</u>
< \$10,000,000	\$20,000
10,000,001-20,000,000	\$35,000
>20,000,000	\$50,000

The HGA's obligation to pay the City Annual Fee will not commence and be effective until substantial completion of the restoration of the Golf Course, including the renovation of the driving range, as set forth in Subsection (iii) of Schedule 2, and the Golf Course is open to the public for the Permitted Uses. The City will invoice for these actual administrative and marketing costs on an annual basis, and the HGA will respond with payment within its subsequent payables cycle. The Maximum Fee may escalate each year after December 31, by an amount commensurate with the increase in the Consumer Price Index as determined by the Department of Labor for Houston, Texas, from December 31st of the previous year, and with such amount being provided to the HGA in writing, within fourteen (14) days after the end of each year. Such payment shall be due and payable at the office of the Director, 2999 South Wayside Drive, Houston, Texas 77023, on or before the fifteenth (15th) day of the month following the month in which such revenue were determined. Any payment which is thirty (30) days or more overdue shall constitute a default as set out in paragraph 15.

Section 6.3 Additional Consideration. As additional consideration for this agreement, HGA agrees that it will reinvest capital or place funds into a reserve fund as part of a reinvestment program as reasonably and mutually approved by the HGA and the City.

Section 6.4 Water. Landlord will provide water for ground irrigation purposes from either public potable water lines, reclaimed wastewater, or greywater at Landlord's election. Tenant is responsible for drinking water and sewage fees, and all other desired utilities.

Section 6.5 Utilities. HGA shall be solely responsible for and promptly pay all charges for any and all desired utilities including but not limited to garbage, telephone and internet, and building security system used or consumed by Tenant. The assumption of payments for such utilities shall commence on the Commencement Date.

Section 6.6 Taxes. HGA shall be responsible for any and all sales taxes, ad valorem taxes, licenses, permits, and fees or other taxes incumbent upon such a business.

ARTICLE 7 OPERATIONS

Section 7.1 Duties. HGA shall provide all labor, material and supervision necessary to perform the services described in this Agreement.

7.1.1 HGA shall adequately equip, properly manage, and capably maintain the Golf Course, but not the Community Amenities, within the site boundaries outlined in Exhibit "A-1" and legally described in Exhibit "A".

7.1.2 HGA shall keep the Golf Course open, collect fees (where applicable), sufficiently stock all products herein allowed that the public might be well served, and adequately staffed so that allowed services are rendered to the levels consistent with similar uses and facilities in the Houston, Texas metropolitan area, and as reasonably designated or established by the HGA.

7.1.3 HGA shall not institute or allow any illegal activity in, on or about the Golf Course. HGA shall take notice of such activity and immediately make such known to the Director and the Houston Police Department.

Section 7.2 Coordinate Performance. HGA shall coordinate its performance with the Director and other persons that the Director designates. HGA shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement. HGA and City shall use the first 30 days of the Contract Term as a transition period to transfer the operations of the Golf Course from the City to HGA.

Section 7.3 Special Events. The City shall have the right to schedule two Golf Tournaments per year. Such Tournaments shall be scheduled at least one year in advance. The City shall also have the right to use any event space up to six times a year for a period of no more than 12 hours each time. City use of the event space will be subject to prior notice and reasonable scheduling. The City will reimburse Tenant its out of pocket expenses incurred during such Tournament or use of event space, but not lost revenues.

Section 7.4 Exhibits. The attached Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit G and Exhibit H may be amended by mutual agreement between the Director and HGA in order to accommodate necessary changes discovered before or during the

transition period between the Effective Date and the Commencement Date, and after operations commence.

Section 7.5 Fees and Schedule. HGA shall operate the Golf Course in accordance with this Agreement and as further set forth in the Operation Rules set forth in Exhibit "B".

7.5.1 HGA will charge greens fees at rates sufficient to maintain the golf course and facilities. HGA will present a comprehensive rate program for the Director's approval that will be reflective of the condition of the facilities and may increase as the restoration progresses which will be attached as Exhibit "G". The post restoration fees will incorporate resident, non-resident and corporate outing rates. The Director shall approve any rate program that is within 10% of the average of rates charged by municipal golf courses in the top four (4) metropolitan areas of Texas and the Director may approve other rate structures if warranted by the circumstances of the market or course in question, but in any event, the rate structure shall not generate more revenue than necessary to support operations, maintenance and capital renewal of the course. The fee structure will have reasonable allowances for children and people of limited economic resources. Any net proceeds from fees received must be used toward the operation, repair, replacement, maintenance and capital reinvestment of the Golf Course.

7.5.2 HGA shall operate throughout the year in accordance with the scheduled days, dates, and hours as set out in Exhibit "C". Certain circumstances beyond the control of HGA, such as weather, repairs, maintenance, construction projects, or special events may necessitate extending, curtailing, or shortening the operating schedule

Section 7.6 Fixtures, Installations and Equipment. With the exception of the Golf Course Equipment provided by the City and conveyed to the HGA, as listed in Exhibit "E", HGA shall provide, at its sole cost and expense, equipment as may be necessary for operation under this Agreement, as well as all supplies, materials, and equipment needed to maintain, service, and repair equipment. HGA shall pay all costs of installation, maintenance, construction and operation necessary for satisfactory operation of the Golf Course, and as further set forth in the minimum maintenance standards set forth in Exhibit E attached hereto. This will include, but is not limited to, utilities and salaries of HGA's employees, who shall never be considered City Employees. With the exception of the furnishings and fixtures currently located at the Golf Course, HGA shall furnish and maintain all necessary furniture and fixtures and a sufficient amount of movable equipment, including cash registers with recording/communicating devices.

Section 7.7 Marketing and Operations.

7.7.1 Marketing Plan. HGA may develop an annual marketing plan that describes the advertising campaigns, onsite advertising and any other marketing program that HGA desires to deploy in the coming year and submit same to

the Director for approval. The Director shall provide HGA comments or approval within 14 days of receipt, provided however, if no response is given within the 14-day review period, the plan shall be deemed to have been approved. Any advertising, sign or marketing program included in the Plan shall be deemed approved for purposes of Sections 7.7.2, 7.7.3 or 7.7.4.

7.7.2 Advertising. Any advertising, in any manner or form or media, connected with the operation of the Golf Course under this Agreement shall, prior to implementation/distribution, be submitted to the Director for review and approval. The Director shall approve or disapprove submitted advertisement(s) within 10 days. The employment of free passes or discounts is promotional advertising and as such must be authorized by the Director in like manner. HGA shall not display, distribute, or advertise anything that has been disapproved by the Director.

7.7.3 Signs. HGA shall place no sign or advertisement upon any property of the City or upon any fence, vehicle, fixture, or ticket booth shed under his control without approval of the Director. The City shall have the right to remove any sign or signs that may be erected without such approval. HGA shall maintain any sign, awning, canopy, decoration, lettering, advertising matter or other things as may be approved, in good condition and repair at all times.

7.7.4 Cross-Marketing. HGA shall promote other Departmental activities, facilities, and concessions by prominently displaying related brochures, schedules, or other such literature as approved by the Director. The City will promote the Golf Course in the same manner as it does for other city Golf Courses or recreational programs of the City.

Section 7.8 HGA's Personnel. HGA will hire and employ such personnel and volunteers as will, in its judgment, be necessary to operate, manage, and maintain the facilities in accordance with the provisions of the Agreement. HGA will prepare an Employee/Volunteer Performance Manual (Exhibit "H") and submit it to the Director for approval.

7.8.1 HGA shall consider hiring but is not required to hire employees of the City currently working at the Golf Course who wish to continue working at the Golf Course as employees of HGA. The City and HGA will coordinate communications with the existing City employees to ensure that existing employees are aware of the options available to them during the transition.

7.8.2 HGA's employees shall be properly trained in their duties and must be adequate in number and quality to provide prompt and efficient service to the public. The City reserves the right to monitor HGA's employees' attitudes, appearance, courtesy, job knowledge, and performance. Should a deviation from acceptable standards be observed, the Director may notify HGA in writing, outlining required corrective action. HGA shall promptly take such corrective action.

7.8.3 HGA shall ensure that a number of employees sufficient to protect the employees, volunteers and visitors will be trained in CPR (Cardio Pulmonary Resuscitation), administering first aid, and other life-saving techniques. Certification in such area or techniques is not mandated by this clause.

7.8.4 Except for volunteers, all personnel shall be employees of HGA and shall be carried as employees on HGA's payroll and shall be paid at least the minimum wage in accordance with the Fair Labor Standards Act as prescribed by the U. S. Department of Labor, Employee Standards Administration. HGA shall be solely responsible for the compensation of all such personnel, for the withholding of income, social security and other payroll taxes and for the coverage of all workers' compensation benefits.

7.8.5 HGA shall keep accurate records of the names, addresses, and other legal identification of those to whom badges with photographs are issued to assure proper identification and legal working status of employment at any time required by the City or any other proper agency.

7.8.6 HGA shall have no authority to employ City personnel, and no employees or independent contractors of HGA shall be deemed to be employees or agents of the City, such persons at all times remaining HGA's employees.

Section 7.9 Reports and Records. HGA shall follow recognized, modern business practices to the end of providing efficient and adequate services to the public at fair and reasonable rates. Accurate, prompt, and timely reporting is of the essence, and failure to do so shall constitute default. The City reserves the right, for three years subsequent to contract termination, for whatever reason, to inspect all revenue records. HGA shall maintain all such records.

7.9.1 HGA shall submit an annual report to the City on April 1 of every year this Agreement is in effect. In addition to financial statements showing revenues, expenses and balance sheets, the report shall include operational information including number of visitors, a description of activities and programs including community outreach and educational programs and participants in same, and any other relevant information concerning the operation of the Golf Course.

7.9.2 HGA shall keep true, accurate and complete records of all its operations under this Agreement, including all receipts and disbursements. Ledgers, reporting forms, transaction documentation, and accounting methods shall be in such form and kept in such manner as approved by the Director. All books, accounts, records, and operations of HGA shall be open at any time during business hours for inspection and copying by the Department, City Controller's office, City auditor, or other authorized representative or agent. No more than 24 hours advance notice of such requested inspection or copying or both shall be required by HGA.

7.9.3 Checking and banking accounts of HGA for receipts derived from this Agreement shall be kept separate from other accounts of HGA and shall be

available for review by the Director, upon his/her request, at any time during regular business hours.

7.9.4 The City reserves the right to require audited statements of HGA operations under this Agreement for any revenue periods. Such requirement should be anticipated in the event HGA defaults on this Agreement, with such expense being borne by HGA.

7.9.5 After the Golf Course is open to the public for the permitted uses, HGA will provide a monthly report of the rounds played to the Director.

Section 7.10 Inspections and Permits. HGA is required to obtain and maintain any and all permits required by the City or any other governmental agency with authority to regulate the activities on the premises as well as perform or allow any annual or periodic inspections that are required.

Section 7.11 Certifications. HGA shall maintain current certifications to use any and all chemicals required for the HGA to perform its obligations under this agreement.

ARTICLE 8 MAINTENANCE REPAIRS, and ALTERATIONS

Section 8.1 Course Maintenance, Non-Course Maintenance, and Housekeeping Responsibilities. HGA shall be responsible at its sole expense for all maintenance and upkeep, including the gathering of Golf Course-generated trash, litter, and refuse.

8.1.1 HGA shall meet the maintenance standards made a part of this Agreement by Exhibit "D", "Minimum Maintenance Standards." As technology and practices change, the Director reserves the right to reasonably update and modernize the maintenance standards accordingly. Such course maintenance standards will not be changed more than once annually and if a change is required, the Director shall notify HGA on the anniversary date of this Agreement.

8.1.2 HGA shall at its sole expense, maintain all equipment and fixtures, and conveyances related to this Agreement in a safe, clean, attractive, and orderly manner.

8.1.3 Should HGA fail to maintain acceptable standards with regard to the foregoing, the Director shall notify HGA, in writing, of noted deficiencies. Thereupon, HGA shall reasonably correct, remedy, or eliminate such deficiencies expeditiously but no later than the cure period set forth in Section 15.1.

Section 8.2 Right to Alter. Tenant shall have the right, pursuant to the terms of this Lease, to alter, add to, reconstruct, reconfigure, remodel or rebuild as often as and whenever Tenant deems proper or desirable, any of the Improvements.

8.2.1 HGA shall not make or cause to be made any material alterations, additions, or improvements involving investment of more than \$100,000.00 in the Golf Course without first obtaining the Director's written approval, which approval will not be unreasonably withheld, delayed or conditioned. HGA shall present to the Director plans, specifications, and projected cost for such work at the time approval is sought. HGA shall be responsible for securing its permits for such material alterations or additions in the Golf Course

8.2.2 Except for the Improvements donated to the City, during the term of this Agreement, if any, all Golf Course alterations, decorations, additions, and improvements made by HGA shall remain the property of the HGA during the Contract Term.

8.2.3 Upon expiration of this Agreement, HGA shall remove trade fixtures and all such alterations, decorations, additions, and improvements as the Director shall direct and shall leave the Golf Course in a reasonable condition, ordinary wear and tear, and damage by unavoidable casualty excluded. All alterations, decorations, additions, and improvements, including the Improvements, not removed shall, upon expiration of the Contract Term, become the property of the City of Houston.

Section 8.3 Repairs. HGA is authorized and required to make all ordinary and reasonable repairs and maintenance of a non-casualty nature to any properties and equipment and must maintain records of substantive repairs. HGA shall be responsible for all rebuilding, restoration, and/or replacement of all property necessitated by casualty resulting from the negligence or intentional act of the HGA, its agents, or employees.

8.3.1 All repairs and/or maintenance, which are required to be performed by HGA under this Section, shall be completed as soon as reasonably possible and to the reasonable satisfaction of the Director.

8.3.2 In the event HGA believes the responsibility for a particular repair or maintenance lies with the City, it shall immediately give such written notice to the Director.

8.3.3 The City may but is not required to authorize, by written notice and at its cost, the rebuilding, restoration and/or replacement of City property where same is necessitated by fire, wind, storm, or other natural casualty not resulting from the negligence or intentional act of the HGA, its agents, or employees. Nothing in this Agreement shall be construed as a requirement of the City to restore such loss.

ARTICLE 9 DONATION OF IMPROVEMENTS

Section 9.1 Donation. Upon the termination of this Agreement, HGA shall donate the completed Improvements to City (the "Donation"). The Donation shall be subject to the conditions set forth in Section 9.2 below. The Donation shall be effected by HGA's execution and delivery to City of the following:

9.1.1 an itemized Bill of Sale and Assignment covering the Plans, the Construction Contracts, and all warranties relating to the construction and provision of the Improvements (subject to HGA's rights to enforce such Construction Contracts and warranties as needed for any repairs of defective construction work or materials in the Improvements), but such Bill of Sale shall not be subject to liens, restrictions or encumbrances created by, through or under HGA. No personal property, equipment or removable fixtures contained in the Improvements that may be removed without material damage to the Improvements will be conveyed to City. It is the intent of the parties that, upon the Donation, City shall take title to and succeed to the fully operable Improvements.

Section 9.2 Conditions to Donation.

9.2.1 As of the date of the Donation, HGA shall represent and warrant to, and covenant with, City that:

(i) HGA has good and indefeasible title in fee simple to the Improvements, free and clear of all liens;

(ii) there are no actions, suits, claims, assessments, or proceedings pending or, to the actual knowledge of HGA, threatened that could materially adversely affect the ownership, operation, or maintenance of the Premises and Improvements;

(iii) HGA has not entered into any agreement or instrument nor taken any action that would constitute an encumbrance of title to the Premises and Improvements, other than HGA's subleases and bookings with other users of the Improvements and licenses or concession agreements for food and beverage service and other ancillary services and amenities consistent with the Permitted Use;

(iv) all bills and other payments due from HGA with respect to the ownership of the Premises and construction of the Improvements have been paid by HGA and no liens or other claims for the same have been filed or asserted against any part of the Premises or Improvements;

(v) HGA has full right, power and authority to donate the Premises and completed Improvements to City without obtaining any consents or approvals from, or the taking of any other actions with respect to, any third parties, and such Donation constitutes the valid and binding action of HGA;

(vi) HGA is not a "foreign person" (as defined in Internal Revenue Code Section 1445(f)(3) and the regulations issued thereunder); and

(vii) HGA (a) is not in receivership or dissolution, (b) has not made any assignment for the benefit of creditors, (c) has not admitted in writing its inability to pay its debts as they mature, (d) has not been adjudicated a bankrupt, and (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking

reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state.

9.2.2 In the event that City's environmental testing reveals the presence of any environmental contamination caused or brought into the Premises by the HGA in levels requiring remediation, City and HGA shall extend the period before the Improvements are donated to City in order for HGA at its expense to remediate the contamination to bring the Premises into compliance with Applicable Laws.

9.2.3 If City finds any items in the as-built survey or title commitment caused by the HGA, that would materially adversely affect City's ownership of the Premises and Improvements following delivery of the Bill of Sale, City shall specify such items to HGA in writing and HGA shall remove or cure such items at its expense.

ARTICLE 10 INSURANCE

Section 10.1 Insurance. Tenant agrees to obtain and maintain at all times during the Term of this Agreement and to cause any Subtenant and Contractor ("Contractor") to obtain and maintain at all times during the Term of their contract or sublease insurance meeting at a minimum all of the following requirements:

Coverage	Limit of Liability
1) Workers' Compensation:	Statutory Limits for Workers' Compensation
2) Employer's Liability:	<ul style="list-style-type: none">• Bodily Injury by Accident \$1,000,000 (each accident)• Bodily Injury by Disease \$1,000,000 (policy limit)• Bodily Injury by Disease \$1,000,000 (each employee)
3) Commercial General Liability: Including Bodily and Personal Injury; and Products and Completed Operations coverage	Bodily Injury and Property Damage, Combined limit of \$1,000,000 (each occurrence), and \$2,000,000 aggregate
4) Automobile Liability Insurance: (For automobiles furnished by HGA in the course of its performance under this Agreement, including Employer's Non Owned and Hired Auto Coverage)	\$1,000,000 combined single limit each occurrence

Coverage	Limit of Liability
<p>Defense costs are excluded from the face amount of the policy. Aggregate Limits are per 12-month policy period unless otherwise indicated.</p>	

Section 10.2 Additional insurance requirements.

10.2.1 Forms of Policies. The insurance may be in one or more policies of insurance, the form of which must be approved by the Director and City Attorney; however such approval shall never excuse non-compliance with the terms of this Section.

10.2.2 Certificates. The insurance coverage's may be represented in one or more certificates of insurance. It is agreed, however, that nothing included within or omitted from the insurance certificates shall relieve the Tenant from its duties to provide the required coverage hereunder.

10.2.3 Issuers. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas issued by the Texas Board of Insurance and a rating of at least "B+" and a financial size of Class VI or better in the most current edition of Best's Insurance Reports. Each issuer must be responsible and reputable and must have financial capability consistent with the risks covered.

10.2.4 Additional Insured. Each policy, except those for Worker's Compensation and Employer's Liability, must name Landlord and its agents, officers, directors, officials, legal representatives, employees and assigns as additional insured parties on the original policy and all renewals or replacement during term of such HGA's agreement or contract with Tenant and/or Subtenant. If any of such policies are written as "claims made" coverage and Landlord is required to be carried as an additional insured, then HGA must purchase policy period extensions so as to provide coverage to Landlord for a period of at least two (2) years after the completion of the work contemplated by such Contractor's agreement or contract with Tenant and/or Subtenant.

10.2.5 Deductibles. A policy may contain deductible amounts as approved by HGA. HGA shall assume and bear any claims or losses to the extent of such deductible amounts and waives any claim it may ever have for the same against Landlord, its officers, agents or employees with respect to such deductible amounts.

10.2.6 Cancellation. All such policies and certificates shall contain an agreement that the insurer shall notify Landlord in writing not less than thirty (30) days before any material change, reduction in coverage or cancellation of any policy. HGA shall give written notice to Landlord within five (5) days of the date upon which

total claims by any party against the Contractor reduce the aggregate amount of coverage below the amounts required by this Agreement. HGA shall notify the Director in writing 30 days prior to any cancellation or material change to HGA's insurance coverage. Within the 30 day period, HGA shall provide other suitable policies in lieu of those about to be canceled or non-renewed so as to maintain in effect the required coverage. If HGA does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend HGA from any further performance under this Agreement and begin procedures to terminate for default.

10.2.7 Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against Landlord, its officers, agents or employees.

10.2.8 Endorsements. Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to Landlord as an additional insured with respect to claims arising hereunder and that the insurance applies separately to each insured.

10.2.9 Premiums. HGA shall pay all insurance premiums, and the City shall not be obligated to pay any premiums. If any insurance policy required hereunder does not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate or waiver sufficient to establish that the issuer is entitled to look only to the Contractor for any further premium payment and has no right to recover any premiums from Landlord.

10.2.10 Blanket Policies. HGA shall be entitled to purchase and maintain the insurance required under this Section 6.1(B) under so called "blanket" policies, provided the coverage thereunder is at least the levels contained herein and is otherwise adequate in keeping with prudent underwriting standards.

10.2.11 Policies. At Landlord's request, copies of all policies referred to above, certified by the agent or attorney-in-fact issuing them, together with written proof that the premiums have been paid, shall be deposited by HGA with the Director of Houston Parks and Recreation Department (the "Director"). If the Director fails to request copies of such policies, HGA shall provide certificates of insurance, in lieu of policies, reflecting that the terms of this Section 7.1(b) have been met, such certificates to be provided before the Contractor begins any work in, on or about the Premises. Along with such policies or certificates, HGA shall provide the Director with a list of any claims paid out against the aggregate total of any such policy.

10.2.12 Subcontractors. HGA shall require all subcontractors whose subcontracts exceed \$100,000 to provide proof of insurance coverages meeting all requirements of Section 10.1 above, with appropriate Additional Insured and Waiver of Subrogation endorsements.

Section 10.3 WAIVER OF RIGHT OF RECOVERY. ANYTHING TO THE CONTRARY IN THIS AGREEMENT NOTWITHSTANDING, TO THE MAXIMUM

EXTENT PERMITTED BY LAW, LANDLORD AND TENANT EACH WAIVE ALL RIGHTS OF RECOVERY, CLAIM, ACTION OR CAUSE OF ACTION OR SUBROGATION AGAINST THE OTHER AND THE OTHER'S AFFILIATES AND THEIR RESPECTIVE PARTNERS, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR REPRESENTATIVES FOR ANY DAMAGE TO THE PREMISES AND/OR THE IMPROVEMENTS, TO THE EXTENT THAT SUCH DAMAGE IS DUE TO AN INSURED CASUALTY RISK (AS SUCH TERM IS DEFINED IN THE LEASE AND DEVELOPMENT AGREEMENT) REGARDLESS OF CAUSE OR ORIGIN, INCLUDING NEGLIGENCE OF LANDLORD, TENANT, THEIR AFFILIATES OR THEIR PARTNERS, AGENTS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR REPRESENTATIVES.

ARTICLE 11 DAMAGE OR DESTRUCTION

Section 11.1 Occurrence of Casualty and Use of Insurance Proceeds. In the event that all or any part of the Premises or Improvements are materially damaged or destroyed, HGA will immediately notify City as to the nature and extent of such damage or destruction. All proceeds payable with respect to such damage or destruction shall be used promptly to reconstruct, rehabilitate or otherwise benefit the Improvements.

Section 11.2 Repairs. Promptly upon receipt of any insurance proceeds relating to damage or destruction to the Premises or Improvements, HGA will immediately begin to repair and restore the Premises and Improvements to substantially the same condition in which they existed immediately prior to the occurrence of the casualty to the extent of the insurance proceeds available for such restoration.

Section 11.3 Property at HGA's Risk. HGA's supplies and all merchandise, effects, and other property of every kind, nature, and description belonging to HGA, which may be on or in the Golf Course during the Lease Term or any extension thereof, shall be at the sole risk and hazard of HGA; and if the whole or any part thereof shall be destroyed or damaged for any reason, the City shall not be responsible.

Section 11.4 Destruction of Properties under Contract. If the Golf Course is destroyed or materially damaged to such extent that the Director and the HGA mutually determine that the Golf Course is wholly unfit, in whole or a material part, for use by HGA in his operations, either the City or HGA may terminate this Agreement.

ARTICLE 12 CONDEMNATION

Section 12.1 Definitions. Whenever used in this Article 12, the following words shall have the definitions and meanings hereinafter set forth:

12.1.1 "Condemnation Proceedings". Any action brought for the purpose of any taking of the Premises, any Improvements thereon, or any part thereof or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Premises), by a competent authority as a result of the

exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of condemnation or while such action or proceeding is pending.

12.1.2 "Taking" or "Taken". The event and date of such competent authority's depositing of money into the registry of the court for purposes of obtaining title to the Premises, any Improvements thereon, or any part thereof, or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Premises), pursuant to a Condemnation Proceeding, or the event and date of execution and delivery of a deed-in-lieu of condemnation.

Section 12.2 Efforts to Prevent Taking. Landlord shall use its reasonable efforts to cause all other competent authorities with the power of eminent domain to refrain from instituting any Condemnation Proceedings or exercising any other powers of eminent domain with respect to the Premises, or any interest in any of the foregoing during the Term of this Agreement.

Section 12.3 Entire Taking. If all or substantially all of the Premises shall be Taken in Condemnation Proceedings, Tenant shall have the right to terminate this Agreement in accordance with Section 12.6 below effective as of the date of such Taking, and from and after such date Tenant and, provided Landlord has fully complied with its obligations under Section 12.2 above and under said Section 12.6 below, Landlord shall not have any further obligations under this Agreement with respect to the Premises.

Section 12.4 Partial Taking.

12.4.1 If less than substantially all of the Premises shall be Taken in Condemnation Proceedings, from and after the effective date of such Taking, Tenant and, provided Landlord has fully complied with its obligations under Section 12.2 above and under Section 12.6 below, Landlord shall not have any further obligations under this Agreement with respect to the portion of the Premises so taken.

12.4.2 If, following any such partial Taking, Subtenant, in connection with any such partial Taking, exercises any right of termination under the Lease and Development Agreement, then Tenant, at its election may vacate the Premises, and from and after such vacation Tenant and, provided Landlord has fully complied with its obligations under Section 12.2 above and under Section 12.6 below, Landlord shall not have any other obligations under this Agreement with respect to the Premises. Such election to vacate must be exercised no later than one hundred eighty (180) days after the date of such partial Taking.

12.4.3 If Tenant does not elect to vacate the Premises upon any partial Taking, then (i) the Premises shall be reduced by the portion thereof Taken in the Condemnation Proceeding, and (ii) Tenant shall have the right to repair or reconstruct the Arena and any other remaining Improvements on the Premises in accordance with the provisions of the Arena Lease with no abatement of Rent hereunder.

Section 12.5 Temporary Taking. If any right of temporary (hereinafter defined) possession or occupancy of all or any portion of the Premises shall be Taken, the obligations of Tenant hereunder as to the affected portion of the Premises shall be abated during the duration of such Taking. A Taking shall be considered "temporary" only if the period of time during which Tenant is deprived of usage of all or part of the Premises as the result of such Taking does not materially interfere with the ability of Subtenant to use the Premises for any of the Permitted Uses. Any other Taking that is not "temporary" as described above shall be treated as an entire Taking under Section 12.3 above or as a partial Taking under Section 12.4 above, as determined by Tenant.

Section 12.6 Condemnation Award.

12.6.1 At any time within one hundred eighty (180) days after an entire Taking or a partial Taking following which Tenant vacates the remaining Premises as provided in Section 12.4.2 above, Tenant may terminate this Agreement by delivering a written termination notice to Landlord specifying the effective date of such termination, in which event the Term shall terminate as of the date specified by Tenant in such notice and the entire condemnation award shall be paid to Landlord.

12.6.2 In the event this Agreement is not terminated in connection with a Taking as provided above, the entire condemnation award shall be paid to Tenant (or Subtenant) for use in the rebuilding, restoration and repair of the Improvements on the Premises in accordance with the provisions of the Lease and Development Agreement, and in such event Landlord hereby assigns to Tenant all right, title and interest in any such award.

Section 12.7 Settlement of Proceedings. Landlord shall not make any settlement with the condemning authority in any Condemnation Proceedings nor convey or agree to convey the whole or any portion of the Premises to such authority in lieu of condemnation without first obtaining the written consent of Tenant and Subtenant.

Section 12.8 Survival. The provisions contained in this Article 12 shall survive the expiration or earlier termination of this Agreement, but only insofar as such provisions relate to any Condemnation Proceedings or condemnation awards that arose prior to the expiration or earlier termination of this Agreement.

ARTICLE 13
ASSIGNMENT; SUBLETTING; NON-DISTURBANCE

Section 13.1 Assignment. Except with regard to an assignment to a non-profit subsidiary or related entity to the HGA, for which a consent is not required, HGA shall not assign this Contract in whole or in part, nor subcontract all or any part of the contract without first obtaining the written consent of the Director. In the event the Director consents to such assignment or subcontract, HGA shall remain primarily responsible for the Contract performance, including payments herein provided, unless otherwise expressly provided by the written consent of the Director. If this Contract is assigned, or if the Golf Course or any part thereunder, be sublet or occupied by any

person other than HGA without the consent as hereinabove provided, the City may collect rent from the assignee, subtenant, or occupant, but no such assignment, subletting, occupancy, or collection shall be deemed a waiver of this Paragraph, or the acceptance of the assignee, subtenant, or occupant as Concessionaire, or a release of HGA from any of the covenants herein contained. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Chapter or HGA, as appropriate, shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Section 13.2 Nondisturbance and Attornment Agreements. In connection with any subleases, licenses or concessions made by HGA pursuant to the provisions of Section 13.1 or any bookings made by HGA, the applicable subtenants, licensees or concessionaires or entities that are granted bookings by HGA may ask City to execute various estoppel letters and nondisturbance and attornment agreements and other such instruments (collectively, "Attornment Agreements"). It is expected that such Attornment Agreement would typically ask City to represent that, subject to the timely performance of the obligations of the applicable subtenant, assignee or organization that is granted such bookings, as the case may be, City will continue to honor the sublease, assignment or booking arrangement of the party requesting the Attornment Agreement notwithstanding the termination of this Agreement by City due to the failure by HGA to perform its obligations under this Agreement. If any such Attornment Agreement is in form and substance reasonably acceptable to the City Attorney of the City of Houston, City agrees that the Attornment Agreement shall be executed by the Mayor, to the extent he or she may lawfully do so and bind the City to the applicable Attornment Agreement, within a reasonable period not to exceed thirty (30) days after the delivery of each such Attornment Agreement to City. The Mayor is hereby authorized to execute the Attornment Agreements on behalf of City.

ARTICLE 14

SMALL BUSINESS, MINORITY AND WOMEN BUSINESS ENTERPRISES; NON-DISCRIMINATION

Section 14.1 Business Opportunity. HGA shall comply and shall require its contractors to comply with the City's Small Business Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15 of the City of Houston Code of Ordinances. The City's policy does not require HGA to in fact meet or exceed this goal, but it does require HGA to objectively demonstrate that it has made good faith efforts to do so. To this end, HGA's contractors shall maintain records showing: (i) subcontracts with MWBEs, and (ii) specific efforts to identify and award subcontracts and supply agreements to MWBEs. HGA shall submit periodic reports of its efforts under this Section to the Director of the Office of Business Opportunity for the City in the form and at the times he or she prescribes. The agreements between HGA and its contractors and any subcontractor must expressly require compliance with such Chapter 15 requirements.

Section 14.2 Non-Discrimination. HGA shall not discriminate in its employment practices, service provision, or in any other manner in the use of the Properties or in the exercise of the rights and privileges granted by this Contract because of sex, race, color, ethnicity, national origin, age, familial status, marital status, religion, disability, sexual orientation, genetic information, gender identity or pregnancy ancestry, handicap, or religion.

Section 14.3 Minority Hiring Encouragement. HGA will, in the conduct of its business as a private non-profit corporation, seek to encourage the hiring of minorities and women employees and the contracting with small minority and disadvantaged business enterprises.

ARTICLE 15 DEFAULT OF TENANT

Section 15.1 Defaults by Tenant. The occurrence of any of the following after applicable notice periods shall be an "Event of Default" by Tenant or a "Tenant Default":

15.1.1 the failure of Tenant to operate the Premises as a Golf Course;

15.1.2 the (i) filing by Tenant of a voluntary petition in bankruptcy; (ii) adjudication of Tenant as a bankrupt; (iii) filing of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment, or composition of, or in respect of, Tenant under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors' rights generally, unless within ninety (90) days after such filing such proceeding is stayed or discharged; or (iv) appointment of a receiver, trustee or other similar official of Tenant; and,

15.1.3 the failure of Tenant to reasonably correct within a reasonable period any hazardous condition, caused by Tenant after written notice of such condition from the City. In the event HGA does not promptly remedy such hazardous condition within an agreed time frame authorized by the Director, the City may exercise all of its rights under this Agreement, including the right of the City to perform Tenant's obligations as set forth in Section 21.4 of this Agreement.

15.1.4 the failure of Tenant to keep, observe or perform any of the material terms, covenants or agreements contained in this Agreement to be kept, performed or observed by Tenant including, but not limited to the schedule standards set forth in Schedule 2 and set forth in Sections 15.1.1, 15.1.2 and 15.1.3 above, if (i) such failure is not remedied by Tenant within thirty (30) days after written notice from Landlord of such default or (ii) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) days, Tenant fails to commence to cure such default within thirty (30) days after written notice from Landlord of such default or Tenant fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default

which is not susceptible of being cured with due diligence and in good faith within thirty (30) days, the time within which Tenant is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith;

15.1.5 In the Event of a Default, the City shall provide the HGA a written notice of such default and intent to terminate this Agreement ("Termination Notice"). In the event HGA does not cure such Event of Default within 30 days after such Termination Notice, and as Landlord's sole and exclusive remedies, Landlord may: (i) enforce specific performance of Tenant's obligations hereunder; or (ii) terminate this Agreement, in which event at the direction of the City, the HGA shall vacate the Premises and shall have no right to further operate under this Agreement. The failure to assert any remedy or the granting of any waiver of any event of default shall not be deemed to be a waiver of any remedy or any subsequent event of default.

ARTICLE 16 DEFAULT OF LANDLORD

Section 16.1 Defaults and Remedies. In the event of any breach by Landlord of any covenant of Landlord under this Agreement, Tenant shall have the right to deliver to Landlord a written notice specifying such breach, and unless within thirty (30) days from and after the date of delivery of such notice Landlord shall have commenced to remove or to cure such breach or occurrence and shall be proceeding with reasonable diligence to completely remove or cure such breach or occurrence (provided such breach or occurrence must be cured within sixty (60) days after such notice), then Tenant shall have the right to enforce specific performance, or terminate this Agreement. All remedies of Tenant under this Agreement shall be cumulative, and the failure to assert any remedy or the granting of any waiver (as provided in Section 15.15 of this Agreement) of any event of default shall not be deemed to be a waiver of such remedy or any subsequent event of default.

ARTICLE 17 RELEASE

Section 17.1 RELEASE. HGA AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

ARTICLE 18 INDEMNIFICATION

Section 18.1 INDEMNIFICATION. HGA AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

18.1.1 HGA'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "HGA") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

(i) THE CITY'S AND HGA'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER HGA IS IMMUNE FROM LIABILITY OR NOT;

(ii) AND THE CITY'S AND HGA'S ACTUAL OR ALLEGED PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER HGA IS IMMUNE FROM LIABILITY OR NOT.

18.1.2 HGA SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. HGAS INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. HGA SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

Section 18.2 INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY. HGA SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

ARTICLE 19 INDEMNIFICATION – PROCEDURES

Section 19.1 Notice of Claims. If the City or HGA receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include the following:

19.1.1 A description of the indemnification event in reasonable detail,

19.1.2 The basis on which indemnification may be due, and

19.1.3 The anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30-day period, it does not waive any right to indemnification except to the extent that HGA is prejudiced, suffers loss, or incurs expense because of the delay.

19.1.4 Defense of Claims

(i) Assumption of Defense. HGA may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. HGA shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, HGA must advise the City as to whether or not it will defend the claim. If HGA does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(ii) Continued Participation. If HGA elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. HGA may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that HGA does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

ARTICLE 20 REPRESENTATIONS AND WARRANTIES

Section 20.1 Landlord's Representations and Warranties. Landlord hereby represents, warrants and covenants as follows:

20.1.1 Existence. City is a home-rule city duly organized under the laws of the State of Texas and currently existing pursuant to the constitution and laws of the State of Texas.

20.1.2 Authority. Landlord has all requisite power and authority to own the Premises, to execute, deliver and perform its obligations under this Agreement and to consummate the transactions herein contemplated and, by proper action in accordance with all applicable law has duly authorized the execution and delivery of this Agreement.

20.1.3 Binding Obligation. This Agreement is a valid and binding obligation of Landlord and is enforceable against Landlord in accordance with its terms.

20.1.4 No Defaults. The execution by Landlord of this Agreement and the consummation by Landlord of the transactions contemplated hereby do not (i) result in a breach of any of the terms or provisions of, or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under any resolution, indenture, agreement, instrument or obligation to which Landlord is a party or by which the Premises or any portion thereof is bound, or (ii) constitute a violation of any Governmental Rule applicable to Landlord or any portion of the Premises, or of any Governmental Authority having jurisdiction over Landlord or any portion of the Premises.

20.1.5 Consents. No permission, approval or consent by third parties or any other Governmental Authority is required in order for Landlord to enter into this Agreement, make the agreements herein contained or perform the obligations of Landlord hereunder, other than those consents which have been obtained.

20.1.6 Proceedings. There are no actions, suits or proceedings pending or, to the best knowledge of Landlord, threatened or asserted against Landlord which could reasonably be expected to affect or impair Landlord's ability to enter into this Agreement or to perform its obligations hereunder, or which affect in any manner any portion of the Premises, at law or in equity or before or by any Governmental Authority.

20.1.7 No Condemnation Proceedings. Landlord has not received any notice of any Condemnation Proceedings from any Governmental Authority.

20.1.8 Compliance with Laws. Landlord has not received any notice of any violation of any Governmental Rule pertaining to the Premises or any portion thereof.

Section 20.2 Tenant's Representations and Warranties. Tenant hereby represents and warrants as follows:

20.2.1 Existence. Tenant is a non-profit organization duly organized under the laws of the State of Texas and currently existing pursuant to the constitution and laws of the State of Texas and is recognized by the United State Internal Revenue Service as exempt from taxation under the section 501 (c) (3) of the Internal Revenue Code.

20.2.2 Authority. Tenant has all requisite power and authority to own its property, operate its business, enter into this Agreement and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Agreement and the consummation of the transactions herein contemplated.

20.2.3 Binding Obligations. This Agreement is a valid and binding obligation of Tenant and is enforceable against Tenant in accordance with its terms.

20.2.4 No Default. The execution by Tenant of this Agreement and the consummation by Tenant of the transactions contemplated hereby do not (i) result in a breach of any of the terms or provisions of, or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under Tenant's charter or any resolution, indenture, agreement, instrument or obligation to which Tenant is a party or by which the Premises or any portion thereof is bound, or (ii) constitute a violation of any Governmental Rule applicable to Tenant or of any Governmental Authority having jurisdiction over Tenant.

20.2.5 Consents. No permission, approval or consent by third parties or any other Governmental Authority is required in order for Tenant to enter into this Agreement, make the agreements herein contained or perform the obligations of Tenant hereunder, other than those consents which have been obtained.

20.2.6 Proceedings. There are no actions, suits or proceedings pending or, to the best knowledge of Tenant, threatened or asserted against Tenant which could reasonably be expected to affect or impair Tenant's ability to enter into this Agreement or to perform its obligations hereunder, at law or in equity or before or by any Governmental Authority.

ARTICLE 21

MISCELLANEOUS

Section 21.1 Inspection. Tenant shall permit Landlord and its agents, at all reasonable times and without interfering with the operation being conducted upon the Properties, to enter into and upon the Premises during normal business hours for the purpose of inspecting the same, provided that such entry and inspection by Landlord does not interfere with the quiet enjoyment of the Premises by Tenant, Subtenant or any other Party with a right of possession under a Use Agreement.

Section 21.2 Estoppel Certificates. Tenant and Landlord shall, at any time and from time to time upon not less than twenty (20) days prior written request by the other Party, execute, acknowledge and deliver to Landlord or Tenant, as the case may be, a statement in writing certifying (a) its ownership of the interest of Landlord or Tenant hereunder (as the case may be), (b) that this Agreement is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which any charges required hereunder have been paid, and (d) that, to the best knowledge of Landlord or Tenant, as the case may be, no default hereunder on the part of the other Party exists (except that if any such default does exist, the certifying Party shall specify such default). Upon request by Tenant, Landlord's estoppel certificate also shall be addressed to one or more of its subtenants (and/or, with respect to Subtenant, its mortgagee).

Section 21.3 Release. Tenant shall upon termination of this Agreement, execute and deliver to Landlord an appropriate release, in form proper for recording, of all Tenant's interest in the Premises, and upon request of Tenant, Landlord will execute

and deliver a written cancellation and termination of this Agreement and release of all claims (if none are then outstanding or threatened) in proper form for recording to the extent such release is appropriate under the provisions hereof.

Section 21.4 Landlord's Right to Perform Tenant's Covenants. If Tenant shall fail in the performance of any of its covenants, obligations or agreements contained in this Agreement, and such failure shall continue without Tenant curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, Landlord, after ten (10) days' additional written notice to Tenant specifying such failure (or shorter notice if any emergency [meaning that there is imminent danger to the safety of Persons or of substantial damage to property] exists), may (but without any obligation so to do) perform the same for the account and at the expense of Tenant, and the amount of any payment made or other reasonable expenses (including reasonable attorneys' fees) incurred by Landlord in curing such default, together with interest thereon at the rate of ten percent (10%) per annum, shall be payable by Tenant to Landlord on demand. This provision is not in lieu of, but is in addition to, any other rights or remedies Landlord may have with respect to any such failure of performance by Tenant.

Section 21.5 Notices. All notices, consents, directions, approvals, instructions, requests and other communications and all payments, as applicable, given to a Party under this Agreement shall be given in writing to such Party at the address set forth below or at any other address as such Party designates by written notice to the other Party in accordance with this Section 21.5 and may be (i) sent by registered or certified U.S. Mail with return receipt requested, (ii) delivered personally (including delivery by private courier services) or (iii) sent by telecopy (with electronic confirmation of such notice) to the Party entitled thereto. Any notice shall be deemed to be duly given or made (x) three (3) business days after posting if mailed as provided, (y) when delivered by hand unless such day is not a business day, in which case such delivery shall be deemed to be made as of the next succeeding business day, or (z) in the case of telecopy (with electronic confirmation of such notice), when received, so long as it was received during normal business hours of the receiving Party on a business day or otherwise such delivery shall be deemed to be made as of the next succeeding business day. Each Party hereto shall have the right at any time and from time to time to specify additional parties (the "Additional Addressees") to whom notices hereunder must be given, by delivering to the other Party five (5) days' notice thereof setting forth a single address for each such Additional Addressee; provided, however, that no Party hereto shall have the right to designate, in addition to Subtenant, more than two (2) such Additional Addressees. The notice addresses for the Parties shall be as follows:

Notice to Landlord shall be sent to:

City of Houston
Mayor's Office
901 Bagby, 3rd Floor
Houston, Texas 77002
Attention: Mayor

with copies of all notices to Landlord being sent to:

City of Houston
City Attorney's Office
900 Bagby, 4th Floor
Houston, Texas 77002
Attention: City Attorney

and to:

City of Houston
Department of Parks and Recreation
2999 South Wayside
Houston, Texas 77023
Attention: Director

and to:

City of Houston
Office of the Mayor
901 Bagby, 4th Floor
Houston, Texas 77002
Attention: Chief Development Officer

Notice to Tenant shall be sent to:

Houston Golf Association
5810 Wilson Road, Suite 112
Humble, Texas 77396
Attention: President/CEO

Section 21.6 Modifications. This Agreement may be amended or modified at any time, but only by written agreement signed by Landlord and Tenant

Section 21.7 Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience in reference only and do not in any way limit or amplify the terms and provisions of this Agreement.

Section 21.8 Unavoidable Default and Delays. The time within which either Party hereto shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed by Condemnation Proceedings, substantial delays in issuance of applicable permits provided that HGA has proceeded with all due diligence, casualty damage, strikes, lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor, reason of priority or similar regulations or order of any Governmental Authority, enemy action, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of the Party seeking the delay. The

provisions of this Section shall not operate to excuse either Party from prompt payment of monetary obligations required by the terms of this Agreement.

Section 21.9 Partial Invalidity. If any term, provision, condition or covenant of this Agreement or the application thereof to any Party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision, condition or covenant to Persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 21.10 Applicable Law and Venue. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE TERMS, PROVISIONS, OBLIGATIONS AND COVENANTS HEREOF ARE PERFORMABLE IN HARRIS COUNTY, TEXAS. THE PARTIES HEREBY AGREE THAT VENUE FOR ANY ACTION INSTITUTED TO ENFORCE THE RIGHT OF EITHER PARTY HEREUNDER SHALL BE IN A COURT OF COMPETENT JURISDICTION IN HARRIS COUNTY, TEXAS.

Section 21.11 Attorneys' Fees. Should either Party to this Agreement engage the services of attorneys or institute legal proceedings to enforce its rights or remedies under this Agreement, the prevailing party to such dispute or proceedings shall be entitled to recover its reasonable attorneys' fees, court costs and similar costs incurred in connection with the resolution of such dispute or the institution, prosecution or defense in such proceedings from the other party(ies).

Section 21.12 Interpretation. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of principal and agent, partnership, joint venture or any association between the Parties hereto, it being understood and agreed that none of the provisions contained herein or any acts of the Parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the Parties hereto other than the relationship of Landlord and Tenant.

Section 21.13 Brokerage Commission. Landlord and Tenant represent and warrant one to the other that no broker commission, finder's fees or similar compensation is due to any party claiming by, through or under Landlord or Tenant, as applicable.

Section 21.14 Non-Waiver. No Party shall have or be deemed to have waived any default under this Agreement by the other Party unless such waiver is embodied in a document signed by the waiving Party that describes specifically the default that is being waived. Further, no Party shall be deemed to have waived its rights to pursue any remedies under this Agreement, unless such waiver is embodied in a document signed by such Party that describes specifically any such remedy that is being waived.

Section 21.15 Survival. Covenants in this Agreement providing for performance after termination of this Agreement shall survive the termination of this Agreement.

Section 21.16 Entire Agreement. This Agreement and the documents referenced in this Agreement constitute the entire agreement between Landlord and Tenant regarding the subject matter thereof. There are no representations, promises or agreements of either Landlord or Tenant, one to the other, regarding the subject matter of this Agreement not contained in this Agreement or the documents referenced in this Agreement. In the event of any conflict between this Agreement and any document referenced in this Agreement, the provisions of this Agreement shall control.

Section 21.17 Parties in Interest; Limitation on Rights of Others. The terms of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their permitted successors and assigns.

Section 21.18 Covenants Running with the Land. The Parties hereto covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications and recitals contained in this Agreement, except as otherwise expressly stated herein, shall during the Term be construed as covenants running with title to the Premises, and the leasehold estate hereunder, respectively, which shall extend to, inure to the benefit of and bind Landlord, Tenant and their respective permitted successors and assigns to the same extent as if such successors and assigns were named as original parties to this Agreement, such that this Agreement shall during the Term bind the owner and holder of any fee or leasehold interest in or to the Premises, or any portion thereof, and shall bind predecessors thereof except as otherwise expressly provided herein.

Section 21.19 Non-Merger of Estates. The interests of Landlord and Tenant in the Premises shall at all times be separate and apart and shall in no event be merged, notwithstanding the fact that this Agreement or the leasehold estate created hereby, or any interest therein, may be held directly or indirectly by or for the account of the same Person who shall own the fee title to the Premises or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the Premises or under this Agreement join in the execution and recordation of a written instrument effecting such merger of estates.

Section 21.20 City Council Approvals and Appropriations. This Agreement is subject to all applicable terms and provisions of the Charter and the Code of Ordinances of the City, and is subject to approval by the City Council, and shall not be effective until signed by the Mayor and countersigned by the Controller of the City. Notwithstanding anything contained in this Agreement to the contrary, this Agreement does not, nor shall it be construed to, foreclose or waive the application of all lawful requirements under the applicable laws of the State of Texas for (i) the appropriation and payment of funds by the City, or (ii) the approval or issuance of future agreements, permits or licenses by the City. Any provision of this Agreement which contemplates (x)

the payment of money by the City, which payment would require the appropriation of funds over and above any sums appropriated prior to the Commencement Date in connection with this Agreement and the other Project Documents (and the transactions contemplated herein or therein), or (y) any other future action, decision, agreement, waiver or approval which by its nature must be approved by the City Council, including without limitation, the issuance of permits or licenses, shall be subject to the approval of any subsequent City Council to which such matter is presented and to the appropriation by such City Council of the required funds, in the exercise of its legislative discretion.

Section 21.21 Cancellation. The HGA may cancel this agreement for any reason (and after the Donation) upon two years prior written notice to the City stating the planned date of termination. The parties will thereafter cooperate in good faith to transfer operations in manner that is reasonably seamless to the public and the employees. On or prior to the date of such termination the HGA will complete the Donation of the Improvements to the City.

[Signature Pages Follow]



IN WITNESS WHEREOF, this Agreement has been executed by the Parties as of the Effective Date.

ATTEST:



LANDLORD:

CITY OF HOUSTON, TEXAS, a home-rule city organized under the laws of the State of Texas

By: 
Anna Russell, City Secretary

By: 
Annise D. Parker, Mayor


COUNTERSIGNED:


By: 
Ronald C. Green, Controller


DATE OF COUNTERSIGNATURE: 1-28-15

APPROVED:

By: 
Andrew F. Icken,
Chief Development Officer

APPROVED:


By: 
William Joe Turner,
Director, Houston Parks and Recreation Department

APPROVED AS TO FORM:

By: 
Steven Kirkland
Senior Assistant City Attorney




ATTEST/SEAL (if a corporation):
WITNESS (if not a corporation):

By: 
Name: Nancy F. McDowell
Title: Controller

HGA

HOUSTON GOLF ASSOCIATION

By: 
Name: Steven D. Timms
Title: President/CEO

Schedule 1 Funding Plan Schedules (Article 3)

Schedule 1

The Funding Plan Schedule:

- (i) The initial phase of the Funding Plan, requiring the HGA to raise at least \$5,000,000.00 on or before December 31, 2015.
- (ii) A Funding Plan that shows how funding will be achieved for the full refurbishment and renovation no later than May 1, 2015.

Schedule 2 Renovation and Construction Plan Schedule (Section 5.2)

Schedule 2

The Renovation and Construction Plan Schedule (subject to unavoidable default and delay as set forth in Section 21.8):

- (i) Conceptual plans, including updated golf course features by August 31, 2015.
- (ii) Detailed construction plans and cost estimates by November 30, 2015.
- (iii) Substantial completion of the restoration of the Golf Course including the renovation of the driving range by December 31, 2017.
- (iv) The Club House improvements must be substantially completed by July 1, 2019.
- (v) The Final Completion Date shall not be later than December 31, 2019.